

AMENDED IN ASSEMBLY JUNE 27, 2013

AMENDED IN ASSEMBLY JUNE 17, 2013

AMENDED IN SENATE APRIL 16, 2013

AMENDED IN SENATE APRIL 9, 2013

**SENATE BILL**

**No. 249**

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**Introduced by Senator Leno**

(Principal coauthor: Assembly Member Stone)

February 12, 2013

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An act to amend Sections 120975, 121010, 121022, and 121025 of, and to add Section 121026 to, the Health and Safety Code, relating to public health.

LEGISLATIVE COUNSEL'S DIGEST

SB 249, as amended, Leno. Public health: health records: confidentiality.

Existing law requires health care providers and laboratories to report cases of HIV infection to the local health officer using patient names on a form developed by the State Department of Public Health.

This bill would require laboratories, upon request by the department, to report cases of HIV infection by name directly to the department in addition to reports to the local health officer.

*Existing law authorizes state public health agency HIV surveillance staff, AIDS Drug Assistance Program staff, and care services staff to disclose personally identifying information in public health records relating to HIV or AIDS to local public health agency staff, who may further disclose the information to the HIV-positive person who is the subject of the record, or the health care provider who provides that*

*person's HIV care, for the purpose of proactively offering and coordinating care and treatment services to that person.*

*This bill would authorize local public health agency staff to further disclose acquired or developed information to the HIV-positive person who is the subject of the record or the health care provider who provides that person's HIV care, for that purpose.*

Existing law also provides specified health care coverage to individuals under the AIDS Drug Assistance Program (ADAP) and under federal Ryan White Act funded programs, which are administered by the State Department of Public Health. Existing law, with some exceptions, prohibits the disclosure of the results of an HIV test to any 3rd party in a manner that identifies or provides identifying characteristics of the person to whom the test results apply. Existing law also provides that public health records related to HIV or AIDS containing personal identifying information that were developed or acquired by a state or local public agency shall be confidential and shall not be disclosed, except as otherwise provided by law or pursuant to written authorization.

This bill would authorize the State Department of Public Health, subject to specified provisions, and qualified entities, as defined, to share with each other health records involving the diagnosis, care, and treatment of HIV or AIDS related to a beneficiary enrolled in federal Ryan White Act funded programs who may be eligible for services under the federal Patient Protection and Affordable Care Act (PPACA), as specified. The bill would make other related changes.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 120975 of the Health and Safety Code
- 2 is amended to read:
- 3 120975. To protect the privacy of individuals who are the
- 4 subject of testing for human immunodeficiency virus (HIV), the
- 5 following shall apply:
- 6 Except as provided in Section 1603.1, 1603.3, or 121022, no
- 7 person shall be compelled in any state, county, city, or other local
- 8 civil, criminal, administrative, legislative, or other proceedings to
- 9 identify or provide identifying characteristics that would identify

1 any individual who is the subject of an HIV test, as defined in  
2 subdivision (c) of Section 120775.

3 SEC. 2. Section 121010 of the Health and Safety Code is  
4 amended to read:

5 121010. Notwithstanding Section 120975 or 120980, the results  
6 of an HIV test, as defined in subdivision (c) of Section 120775, to  
7 detect antibodies to the probable causative agent of AIDS may be  
8 disclosed to any of the following persons without written  
9 authorization of the subject of the test:

10 (a) To the subject of the test or the subject's legal representative,  
11 conservator, or to any person authorized to consent to the test  
12 pursuant to ~~subdivision (b) of Section 120990 of this code and~~  
13 *Section 6926 of the Family Code.*

14 (b) To a test subject's provider of health care, as defined in  
15 subdivision ~~(d)~~ (j) of Section 56.05 of the Civil Code, except that  
16 for purposes of this section, "provider of health care" does not  
17 include a health care service plan regulated pursuant to Chapter  
18 2.2 (commencing with Section 1340) of Division 2.

19 (c) To an agent or employee of the test subject's provider of  
20 health care who provides direct patient care and treatment.

21 (d) To a provider of health care who procures, processes,  
22 distributes, or uses a human body part donated pursuant to the  
23 Uniform Anatomical Gift Act (Chapter 3.5 (commencing with  
24 Section 7150) of Part 1 of Division 7).

25 (e) (1) To the designated officer of an emergency response  
26 employee, and from that designated officer to an emergency  
27 response employee regarding possible exposure to HIV or AIDS,  
28 but only to the extent necessary to comply with provisions of the  
29 federal Ryan White Comprehensive AIDS Resources Emergency  
30 Act of 1990 (Public Law 101-381; 42 U.S.C. Sec. 201).

31 (2) For purposes of this subdivision, "designated officer" and  
32 "emergency response employee" have the same meaning as these  
33 terms are used in the federal Ryan White Comprehensive AIDS  
34 Resources Emergency Act of 1990 (Public Law 101-381; 42 U.S.C.  
35 Sec. 201).

36 (3) The designated officer shall be subject to the confidentiality  
37 requirements specified in Section 120980, and may be personally  
38 liable for unauthorized release of any identifying information about  
39 the HIV results. Further, the designated officer shall inform the  
40 exposed emergency response employee that the employee is also

1 subject to the confidentiality requirements specified in Section  
2 120980, and may be personally liable for unauthorized release of  
3 any identifying information about the HIV test results.

4 SEC. 3. Section 121022 of the Health and Safety Code is  
5 amended to read:

6 121022. (a) To ensure knowledge of current trends in the HIV  
7 epidemic and to ensure that California remains competitive for  
8 federal HIV and AIDS funding, health care providers and  
9 laboratories shall report cases of HIV infection to the local health  
10 officer using patient names on a form developed by the department.

11 Upon request by the department, laboratories shall report cases of  
12 HIV infection by name directly to the department in a manner  
13 consistent with subdivision (g) of Section 120130, in addition to  
14 reports to the local health officer. Local health officers shall report  
15 unduplicated HIV cases by name to the department on a form  
16 developed by the department.

17 (b) (1) Health care providers and local health officers shall  
18 submit cases of HIV infection pursuant to subdivision (a) by courier  
19 service, United States Postal Service express mail or registered  
20 mail, other traceable mail, person-to-person transfer, facsimile, or  
21 electronically by a secure and confidential electronic reporting  
22 system established by the department.

23 (2) This subdivision shall be implemented using the existing  
24 resources of the department.

25 (c) The department and local health officers shall ensure  
26 continued reasonable access to anonymous HIV testing through  
27 alternative testing sites, as established by Section 120890, and in  
28 consultation with HIV planning groups and affected stakeholders,  
29 including representatives of persons living with HIV and health  
30 officers.

31 (d) The department shall promulgate emergency regulations to  
32 conform the relevant provisions of Article 3.5 (commencing with  
33 Section 2641.5) of Chapter 4 of Division 1 of Title 17 of the  
34 California Code of Regulations, consistent with this chapter, by  
35 April 17, 2007. Notwithstanding the Administrative Procedure  
36 Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of  
37 Division 3 of Title 2 of the Government Code), if the department  
38 revises the form used for reporting pursuant to subdivision (a) after  
39 consideration of the reporting guidelines published by the federal  
40 Centers for Disease Control and Prevention, the revised form shall

1 be implemented without being adopted as a regulation, and shall  
2 be filed with the Secretary of State and printed in Title 17 of the  
3 California Code of Regulations.

4 (e) Pursuant to Section 121025, reported cases of HIV infection  
5 shall not be disclosed, discoverable, or compelled to be produced  
6 in any civil, criminal, administrative, or other proceeding.

7 (f) State and local health department employees and contractors  
8 shall be required to sign confidentiality agreements developed by  
9 the department that include information related to the penalties for  
10 a breach of confidentiality and the procedures for reporting a breach  
11 of confidentiality, prior to accessing confidential HIV-related  
12 public health records. Those agreements shall be reviewed annually  
13 by either the department or the appropriate local health department.

14 (g) No person shall disclose identifying information reported  
15 pursuant to subdivision (a) to the federal government, including,  
16 but not limited to, any agency, employee, agent, contractor, or  
17 anyone else acting on behalf of the federal government, except as  
18 permitted under subdivision (b) of Section 121025.

19 (h) (1) Any potential or actual breach of confidentiality of  
20 HIV-related public health records shall be investigated by the local  
21 health officer, in coordination with the department, when  
22 appropriate. The local health officer shall immediately report any  
23 evidence of an actual breach of confidentiality of HIV-related  
24 public health records at a city or county level to the department  
25 and the appropriate law enforcement agency.

26 (2) The department shall investigate any potential or actual  
27 breach of confidentiality of HIV-related public health records at  
28 the state level, and shall report any evidence of such a breach of  
29 confidentiality to an appropriate law enforcement agency.

30 (i) Any willful, negligent, or malicious disclosure of cases of  
31 HIV infection reported pursuant to subdivision (a) shall be subject  
32 to the penalties prescribed in Section 121025.

33 (j) Nothing in this section shall be construed to limit other  
34 remedies and protections available under state or federal law.

35 SEC. 4. Section 121025 of the Health and Safety Code is  
36 amended to read:

37 121025. (a) Public health records relating to human  
38 immunodeficiency virus (HIV) or acquired immunodeficiency  
39 syndrome (AIDS), containing personally identifying information,  
40 that were developed or acquired by a state or local public health

1 agency, or an agent of that agency, shall be confidential and shall  
2 not be disclosed, except as otherwise provided by law for public  
3 health purposes or pursuant to a written authorization by the person  
4 who is the subject of the record or by his or her guardian or  
5 conservator.

6 (b) In accordance with subdivision (g) of Section 121022, a  
7 state or local public health agency, or an agent of that agency, may  
8 disclose personally identifying information in public health records,  
9 as described in subdivision (a), to other local, state, or federal  
10 public health agencies or to corroborating medical researchers,  
11 when the confidential information is necessary to carry out the  
12 duties of the agency or researcher in the investigation, control, or  
13 surveillance of disease, as determined by the state or local public  
14 health agency.

15 (c) Except as provided in paragraphs (1) to (3), inclusive, any  
16 disclosure authorized by subdivision (a) or (b) shall include only  
17 the information necessary for the purpose of that disclosure and  
18 shall be made only upon agreement that the information will be  
19 kept confidential and will not be further disclosed without written  
20 authorization, as described in subdivision (a).

21 (1) Notwithstanding any other provision of law, the following  
22 disclosures shall be authorized for the purpose of enhancing  
23 completeness of HIV/AIDS, tuberculosis, and sexually transmitted  
24 disease coinfection reporting to the federal Centers for Disease  
25 Control and Prevention (CDC):

26 (A) The local public health agency HIV surveillance staff may  
27 further disclose the information to the health care provider who  
28 provides HIV care to the HIV-positive person who is the subject  
29 of the record for the purpose of assisting in compliance with  
30 subdivision (a) of Section 121022.

31 (B) Local public health agency tuberculosis control staff may  
32 further disclose the information to state public health agency  
33 tuberculosis control staff, who may further disclose the information,  
34 without disclosing patient identifying information, to the CDC, to  
35 the extent the information is requested by the CDC and permitted  
36 by subdivision (b), for purposes of the investigation, control, or  
37 surveillance of HIV and tuberculosis coinfections.

38 (C) *Local public health agency sexually transmitted disease*  
39 *control staff may further disclose the information to state public*  
40 *health agency sexually transmitted disease control staff, who may*

1 *further disclose the information, without disclosing patient*  
2 *identifying information, to the CDC, to the extent it is requested*  
3 *by the CDC, and permitted by subdivision (b), for the purposes of*  
4 *the investigation, control, or surveillance of HIV and syphilis,*  
5 *gonorrhea, or chlamydia coinfection.*

6 (2) Notwithstanding any other provision of law, the following  
7 disclosures shall be authorized for the purpose of facilitating  
8 appropriate HIV/AIDS medical care and treatment:

9 (A) State public health agency HIV surveillance staff, AIDS  
10 Drug Assistance Program staff, and care services staff may further  
11 disclose the information to local public health agency staff, who  
12 may further disclose the information to the HIV-positive person  
13 who is the subject of the record, or the health care provider who  
14 provides his or her HIV care, for the purpose of proactively offering  
15 and coordinating care and treatment services to him or her.

16 (B) AIDS Drug Assistance Program staff and care services staff  
17 in the State Department of Public Health may further disclose the  
18 information directly to the HIV-positive person who is the subject  
19 of the record or the health care provider who provides his or her  
20 HIV care, for the purpose of proactively offering and coordinating  
21 care and treatment services to him or her.

22 (C) Local public health agency staff may further disclose  
23 acquired or developed information to the HIV-positive person who  
24 is the subject of the record or the health care provider who provides  
25 his or her HIV care for the purpose of proactively offering and  
26 coordinating care and treatment services to him or her.

27 (3) Notwithstanding any other provision of law, for the purpose  
28 of facilitating appropriate medical care and treatment of persons  
29 coinfecting with HIV, tuberculosis, and syphilis, gonorrhea, or  
30 chlamydia, local public health agency sexually transmitted disease  
31 control and tuberculosis control staff may further disclose the  
32 information to state or local public health agency sexually  
33 transmitted disease control and tuberculosis control staff, the  
34 HIV-positive person who is the subject of the record, or the health  
35 care provider who provides his or her HIV, tuberculosis, and  
36 sexually transmitted disease care.

37 (4) For the purposes of paragraphs (2) and (3), “staff” shall not  
38 include nongovernmental entities, but shall include state and local  
39 contracted employees who work within state and local public health  
40 departments.

1 (d) No confidential public health record, as defined in  
2 subdivision (c) of Section 121035, shall be disclosed, discoverable,  
3 or compelled to be produced in any civil, criminal, administrative,  
4 or other proceeding.

5 (e) (1) A person who negligently discloses the content of a  
6 confidential public health record, as defined in subdivision (c) of  
7 Section 121035, to any third party, except pursuant to a written  
8 authorization, as described in subdivision (a), or as otherwise  
9 authorized by law, shall be subject to a civil penalty in an amount  
10 not to exceed five thousand dollars (\$5,000), plus court costs, as  
11 determined by the court, which penalty and costs shall be paid to  
12 the person whose record was disclosed.

13 (2) Any person who willfully or maliciously discloses the  
14 content of any confidential public health record, as defined in  
15 subdivision (c) of Section 121035, to any third party, except  
16 pursuant to a written authorization, or as otherwise authorized by  
17 law, shall be subject to a civil penalty in an amount not less than  
18 five thousand dollars (\$5,000) and not more than twenty-five  
19 thousand dollars (\$25,000), plus court costs, as determined by the  
20 court, which penalty and costs shall be paid to the person whose  
21 confidential public health record was disclosed.

22 (3) Any person who willfully, maliciously, or negligently  
23 discloses the content of any confidential public health record, as  
24 defined in subdivision (c) of Section 121035, to any third party,  
25 except pursuant to a written authorization, or as otherwise  
26 authorized by law, that results in economic, bodily, or  
27 psychological harm to the person whose confidential public health  
28 record was disclosed, is guilty of a misdemeanor, punishable by  
29 imprisonment in a county jail for a period not to exceed one year,  
30 or a fine of not to exceed twenty-five thousand dollars (\$25,000),  
31 or both, plus court costs, as determined by the court, which penalty  
32 and costs shall be paid to the person whose confidential public  
33 health record was disclosed.

34 (4) Any person who commits any act described in paragraph  
35 (1), (2), or (3), shall be liable to the person whose confidential  
36 public health record was disclosed for all actual damages for  
37 economic, bodily, or psychological harm that is a proximate result  
38 of the act.

39 (5) Each violation of this section is a separate and actionable  
40 offense.

1 (6) Nothing in this section limits or expands the right of an  
2 injured person whose confidential public health record was  
3 disclosed to recover damages under any other applicable law.

4 (f) In the event that a confidential public health record, as  
5 defined in subdivision (c) of Section 121035, is disclosed, the  
6 information shall not be used to determine employability, or  
7 insurability of any person.

8 SEC. 5. Section 121026 is added to the Health and Safety Code,  
9 to read:

10 121026. (a) Notwithstanding subdivision (f) of Section 120980,  
11 Section 121010, subdivision (g) of Section 121022, subdivision  
12 (f) of Section 121025, Section 121115, and Section 121280, the  
13 State Department of Public Health and qualified entities may share  
14 with each other health records involving the diagnosis, care, and  
15 treatment of human immunodeficiency virus (HIV) or acquired  
16 immunodeficiency syndrome (AIDS) related to a beneficiary  
17 enrolled in federal Ryan White Act funded programs who may be  
18 eligible for services under the federal Patient Protection and  
19 Affordable Care Act (Public Law 111-148), as amended by the  
20 Health Care and Education Reconciliation Act of 2010 (Public  
21 Law 111-152). The qualified entities, who shall be covered entities  
22 under the Health Insurance Portability and Accountability Act (42  
23 U.S.C. Sec. 300gg) and the final regulations issued pursuant to the  
24 act by the United States Department of Health and Human Services  
25 (45 C.F.R. Parts 160 and 164), may share records only for the  
26 purpose of enrolling the beneficiary in Medi-Cal, the bridge  
27 programs, Medicaid expansion programs, and any insurance plan  
28 certified by the California Health Benefit Exchange established  
29 pursuant to Title 22 (commencing with Section 100500) of the  
30 Government Code, or any other programs authorized under the  
31 federal Patient Protection and Affordable Care Act (Public Law  
32 111-148), and for the purpose of continuing his or her access to  
33 those programs and plans without disruption.

34 (b) The information provided by the State Department of Public  
35 Health pursuant to this section shall be limited to only the  
36 information necessary for the purposes of this section and shall  
37 not include HIV or AIDS surveillance data. This information shall  
38 not be further disclosed by a qualified entity, except to any or all  
39 of the following as necessary for the purposes of this section:

1 (1) The person who is the subject of the record or to his or her  
2 guardian or conservator.

3 (2) The provider of health care for the person with HIV or AIDS  
4 to whom the information pertains.

5 (3) The Office of AIDS within the State Department of Public  
6 Health.

7 (c) For purposes of this section, the following definitions shall  
8 apply:

9 (1) “Contractor” means any person or entity that is a medical  
10 group, independent practice association, pharmaceutical benefits  
11 manager, or a medical service organization and is not a health care  
12 service plan or provider of health care.

13 (2) “Provider of health care” means any person licensed or  
14 certified pursuant to Division 2 (commencing with Section 500)  
15 of the Business and Professions Code; any person licensed pursuant  
16 to the Osteopathic Initiative Act or the Chiropractic Initiative Act;  
17 any person certified pursuant to Division 2.5 (commencing with  
18 Section 1797) of the Health and Safety Code; any clinic, health  
19 dispensary, or health facility licensed pursuant to Division 2  
20 (commencing with Section 1200) of the Health and Safety Code.

21 (3) “Qualified entity” means any of the following:

22 (A) The State Department of Health Care Services.

23 (B) The California Health Benefit Exchange established pursuant  
24 to Title 22 (commencing with Section 100500) of the Government  
25 Code.

26 (C) Medi-Cal managed care plans.

27 (D) Health plans participating in the Bridge Program.

28 (E) Health plans offered through the Exchange.

29 (F) County health departments delivering HIV or AIDS health  
30 care services.

31 (d) Notwithstanding any other law, information shared pursuant  
32 to this section shall not be disclosed, discoverable, or compelled  
33 to be produced in any civil, criminal, administrative, or other  
34 proceeding.

35 (e) All employees and contractors of a qualified entity who have  
36 legal access to confidential HIV-related medical records shall be  
37 required to sign confidentiality agreements pursuant to subdivision  
38 (f) of Section 121022.

39 (f) This section shall be implemented only to the extent  
40 permitted by federal law. Information shared pursuant to this

1 section shall be protected in accordance with the federal Health  
2 Insurance Portability and Accountability Act (42 U.S.C. Sec.  
3 300gg) and the final regulations issued pursuant to that act by the  
4 United States Department of Health and Human Services (45  
5 C.F.R. Parts 160 and 164), the Confidentiality of Medical  
6 Information Act (Part 2.6 (commencing with Section 56) of  
7 Division 1 of the Civil Code), and the Insurance Information and  
8 Privacy Protection Act (Article 6.6 (commencing with Section  
9 791) of Part 2 of Division 1 of the Insurance Code).

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